

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

FEDERICO ANGUIANO-SOLIS

Claimant

VS.

IBP, INC.

Respondent

Self-Insured

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Docket No. 205,624

ORDER

Claimant appeals from an award entered by Administrative Law Judge Kenneth S. Johnson on January 26, 1998. The Appeals Board heard oral argument July 21, 1998. Jeff K. Cooper was appointed Board Member Pro Tem to serve in place of Board Member Gary M. Korte who recused himself from this proceeding.

APPEARANCES

Tom R. Fields and C. Albert Herdoiza of Kansas City, Kansas, appeared on behalf of the claimant. Gregory D. Worth of Lenexa, Kansas, appeared on behalf of respondent, a qualified self-insured.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The ALJ denied benefits after finding claimant failed to give notice within ten days as required by K.S.A. 44-520. Claimant appeals from that finding. Claimant also contends the ALJ erred by denying claimant's request that the cost of the evaluation performed by Dr. Edward J. Prostic be reimbursed as unauthorized medical expense.

Respondent contends claimant has failed to establish that he met with personal injury by accident arising out of and in the course of his employment. Respondent also argues that claimant was not disabled from earning full wage for one week and for that reason benefits should be limited to medical expenses. Boucher v. Peerless Products, Inc., 21 Kan. App. 2d 977, 911 P.2d 198, *rev. denied* 260 Kan. 991 (1996). Finally, respondent asks the Board to affirm the decision that claimant did not give timely notice.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board concludes the decision by the ALJ should be affirmed.

Findings of Fact

The Board makes the following findings of facts:

1. Claimant injured his back on July 12, 1995, while putting chucks from one bag to another. At that time, claimant experienced a sudden onset of pain. The accident was a single traumatic event, not a repetitive trauma injury. Although claimant worked after July 12, 1995, the work activities did not make his back injury worse.
2. Claimant notified respondent of the injury on October 4, 1995, more than 75 days after the accident.

Conclusions of Law

1. A claimant must give notice of his or her accident within ten days. But the time limit will be extended to 75 days upon a showing of just cause. Failure to give timely notice completely bars recovery of benefits. K.S.A. 44-520.
2. The date of claimant's accident was July 12, 1995. Claimant's accidental injury was not a repetitive type of injury and the date of accident is not determined under either Berry v. Boeing Military Airplanes, 20 Kan. App. 2d 220, 885 P.2d 1261 (1994); Condon v. Boeing Co., 21 Kan. App. 2d 580, 903 P.2d 775 (1995); or Alberty v. Excel Corporation, 24 Kan. App. 2d 678, 951 P.2d 967, *rev. denied* 264 Kan. ____ (1998).
3. Claimant did not give timely notice as required by K.S.A. 44-520 and benefits must be denied.
4. Claimant is not entitled to be reimbursed for any of the cost of Dr. Prostic's examination, evaluation, or reports.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the award entered on January 26, 1998, by Administrative Law Judge Kenneth S. Johnson should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of July 1998.

BOARD MEMBER PRO TEM

BOARD MEMBER

BOARD MEMBER

c: Tom R. Fields, Kansas City, KS
Gregory D. Worth, Lenexa, KS
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director